



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2015

Ms. JoyLynn Occhiuzzi
Officer for Public Information
Round Rock Independent School District
1311 Round Rock Avenue
Round Rock, Texas 78681

OR2015-16010

Dear Ms. Occhiuzzi:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 573985.

The Round Rock Independent School District (the "district") received a request for proposals and contracts submitted in response to request for proposals numbers 14-087, 14-103, and 14-104. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Edmentum. Accordingly, you state, and provide documentation showing, you notified Edmentum of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Edmentum. We have reviewed the submitted information and the submitted arguments.

Initially, we note Edmentum argues against the release of information that was not submitted by the district. This ruling does not address information that was not submitted by the district and is limited to the information the district has submitted for our review. *See id.*

§ 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264 at *9 (Tex. June 19, 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* Edmentum claims section 552.104 of the Government Code for portions of its information. Edmentum states it has competitors. In addition, Edmentum states the information at issue is confidential and proprietary, and release of the information to Edmentum’s competitor would likely have a negative impact on Edmentum. Edmentum explains it would be harmed if a competitor were given access to the information because the competitor could copy what Edmentum created in response to a future bid. After review of the information at issue and consideration of the arguments, we find Edmentum has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information at issue, which we have marked, under section 552.104(a) of the Government Code.¹

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district may withhold the information we marked under section 552.104 of the Government Code. As no further exceptions to disclosure have been raised, the district must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

¹As we are able to make this determination, we do not address Edmentum’s remaining arguments against release of the information at issue.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a stylized flourish at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 573985

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)